

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

AUG 28 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte GREGORY D. LINDEN, BRENT R. SMITH,  
NIDA K. ZADA, JONATHAN O. AIZEN,  
GEOFFREY B. MACK and AARON STEWART

Application No. 10/050,579

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was returned to the Board of Patent Appeals and Interferences (BPAI) from a prior Undocked Return, on August 15, 2006. A review of the application has revealed that the application is still not ready for docketing as an appeal. Accordingly, the application is herewith being re-returned to the examiner.

The return mailed June 28, 2006 reads in part as follows:

the examiner's § 103(a) rejections are based on prior art references,  
the references should be (have been) listed under the "(8) Evidence  
Relied Upon" heading in the examiner's answer. Correction is  
required.

The Examiner's Answer mailed July 18, 2006 fails to comply with the above directive. In the second answer, the examiner merely list the prior art being relied upon (three U.S. patents) at the top of the first page (cover sheet) of the answer. On page 4 of the Answer mailed July 18, 2006, the heading "**(8) Evidence Relied Upon**" once again states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" beneath it. The Manual Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) defines the above heading as follows:

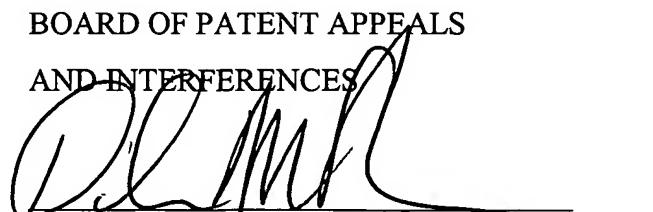
**(8) Evidence Relied Upon.** A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

As per the above, any evidence being relied upon by the examiner (e.g. patents) in the rejections of the appealed claims should be listed under the "**(8) Evidence Relied Upon**" heading in the examiner's Answer. **Correction is required.**

Accordingly, it is

ORDERED that the application is returned to the Examiner

- a) to issue a revised Examiner's Answer listing, **under the appropriate heading**, any evidence being relied upon in the rejection(s) of the appealed claims, and
- b) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES  
By:   
DALE M. SHAW  
Chief Deputy Appeals Administrator  
(571) 272-9797

Application No. 10/050,579

cc: KNOBBE MARTENS OLSON & BEAR LLP  
2040 MAIN STREET  
FOURTEENTH FLOOR  
IRVINE, CA 92614